

(1981) 05 GAU CK 0002

Gauhati High Court

Case No: Civil Rule No. 180 of 1977

Aurora Cinema and Another

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision: May 29, 1981

Acts Referred:

- Assam Municipal Act, 1956 - Section 230, 301(1), 320, 68(1), 68(2)
- Constitution of India, 1950 - Article 14, 162, 19, 226, 309

Citation: (1981) 1 GLR 315

Hon'ble Judges: S.M. Ali, J

Bench: Single Bench

Advocate: S.K. Sen and A.R. Paul Mazumdar, for the Appellant; Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

S.M. Ali, J.

By this petition under Article 226 of the Constitution of India, the Petitioner challenges the orders of the Dibrugarh Municipal Board imposing and enhancing the licence fee for exhibiting cinema shows in the permanent hall of the Petitioner situated at Dibrugarh and third proviso to Section 230(1) of the Assam Municipal Act as violative of Articles 14 and 19 of the Constitution.

2. Briefly stated, the case of the Petitioner is that the Petitioner No. 1 is a registered partnership firm exhibiting films in the aforesaid hall for the last 30 years or more and that under the provisions of the Assam Municipal Act, 1923 (henceforth to be called as the old Act) as well as under the provisions of Assam Municipal Act, 1956 (henceforth to be called as the New Act). The firm has been obtaining licence from the municipality on payment of fees. Petitioner No. 2 is a partner of the firm. Under the old Act the firm was assessed to licence fee of Rs. 400/- which was paid regularly by the Petitioner up to 31st March, 1956. Under the New Act it was raised to Rs.

500/- which was paid by the Petitioners upto 1975-76. But in the middle of the year 1975-76 the fee was enhanced to Rs. 1,250 and then to Rs. 2000/- with approval of the Government. The Petitioners' case is that the municipality cannot impose any fee or enhance the same in absence of rules to be framed by the Government u/s 301 of the New Act, which has not been done yet admittedly. Another point raised on behalf of the Petitioners is that under the Assam Cinemas (Regulation) Act, 1953 (henceforth to be called as the Cinema Act), the Petitioners obtained licence and have been paying the licence fee imposed by the District Magistrate, Dibrugarh. The Cinemas Act regulates exhibition by means of cinematograph and licensing of the cinemas in the State of Assam. It is therefore the contention of the Petitioner that when they have obtained licence under the Cinemas Act, they have no need further to obtain any licence under the Municipal Act.

3. The Respondent No. 1 and 2 in their affidavit in opposition contend that u/s 320 of the Assam Municipal Act, rules have not been framed in general and that the provisions of Section 230 of the New Act are complied with on the basis of resolutions of the Municipal Board subject to approval of the State Government wherever necessary. In the instant case, the Municipal Board at Dibrugarh in consultation with the Director of Municipal Administration made an interim enhancement of the rate of Cinema licence pending approval of the Govt. and issued demand notice for realisation of the fee of Rs. 1,250/-. The Petitioner moved D.C. against the demand notice. But the D.C. declined to interfere after going through the records of the Municipality. It is the further contention of the Respondents that since after the imposition of the initial licence fee great changes have occurred in every field of life and under the impact of changing circumstances Municipal services have been growing more and more costly with the passage of time. So, although the capacity of the Cinema Hall remains the same since before the Municipality has been compelled to enhance the fee. According to the Respondents when there is authority u/s 230 of the Municipal Act to impose licence fee it has got the power of enhancing the fee when required inasmuch as there is the provision of renewal of such licence.

4. In the affidavit in reply on behalf of the Petitioners the averments made in the initial petition are reiterated with some more details. Mr. S.K. Sen, learned Counsel for the Petitioner, confined his arguments to the questions, firstly whether the Municipality can impose licence fee without framing of rules in that behalf which prescribe forms of application for licence, and conditions of license including rates of fee as well as the rules of revision and enhancement of the rates of fee, and secondly, whether the Municipality can enhance the fee as often as it likes in an unbridled way and thirdly whether the Executive Officer of the Municipality that has been under supersession can take the place of the Board as contemplated u/s 68 and Section 230 of the New Act. Learned Counsel pointed out the opening words of Section 68 which are "68 Taxes (1) Subject to the provisions of this Act and the rules made thereunder the Board may from time to time, at a meeting convened

expressly for the purpose of which due notice shall have been given, impose within the limits of the Municipality the following taxes, fees" etc etc. Although licence fee for Cinema is not included in the list under this Section, its provisions referred to above have a bearing on the provision of Section 230 of the Act inasmuch as both the Sections are for similar purpose. Learned Counsel laid much stress on the provisions of Section 230 with regard to the grant of a licence by the Board at a meeting and the renewability of the licence every year "in accordance with such conditions as the Board subject to rule, may think fit to impose". Section 230 of the Act provides for licence for Cinematographic exhibitions etc. Both Sections 68 and 230 speak of rules for imposition and regulation of taxes, tolls and fees and unless and until there are rules for the purpose, no imposition of any tax, toll or fee can be effected. Further according to learned Counsel for the Petitioners any license fee that is fixed by the Municipality in the absence of rules as aforesaid stand illegal and unenforceable.

5. The rule making power lies with the State Government. Section 301 of the Act empowers the State Government to frame rules for the Municipality for the purpose of carrying out the provisions of the Act. Section 301, Sub-section (1) is reproduced below:

The State Government may make rules for the purpose of carrying out the provisions of this Act.

6. What does the term "may" indicate. I find no reason to read the sense of "will" or "shall" into the word "may" as couched in the Sub-section. This being so, I think it merely empowers the State Government to make rules for the purpose of carrying out the provisions of the Act. In such a context the mention of rules u/s 68 and Section 230 of the Act simply means that if there be standing rules in that behalf, the action of the Board for the purpose of those provisions should be commensurate with the rules. There is no reason to think that the Municipality will remain non-functioning simply because there are no rules framed yet for the purpose of carrying out the provisions of the Act. If we are to accept this, as submitted, by the learned Counsel for the 1st Respondent we have to unduly circumscribe that power of the Municipality with which it has been clothed by the Legislature and find the institution in an unwanted state of stagnation and immobility.

7. The authority of the Municipality to impose the fee has not been disputed. But according to learned Advocate for the Petitioners the exercise of power by the Municipality is subject to the condition precedent of existing rules. The answer to this question, I think, will be found from the provisions of Section 301 which empowers the State Government to frame such rules. In the instant case the enhanced license fee has been approved of by the Government and there is no dispute regarding such approval. This being the situation, the imposition cannot be subjected to any challenge because if there be power to impose the licence and if there be approval of the rule making authority the validity of the fee cannot be

questioned. The rule making authority, namely, the State Government, by its executive orders can fill up gap left by any rule or rules. Moreover, the executive power of the Government extends to all matters regarding which the legislature of the State has power to make law under Article 162 of the Constitution subject to the executive power conferred by the Constitution or any other law.

8. In Civil Rules No. 239/80 and 257/80 a Single Bench of this Court dealt with a similar point. In that decision it was held that the executive authority of the State is coextensive with the authority of the Legislature. This finding was made with reference to Articles 73 and 162 of Constitution on the ratio decidendi of [Ch. Khazan Singh and Others Vs. State of U.P. and Others](#), and of [B.N. Naqarajan and Others Vs. State of Mysore and Others](#), In the said Civil Rules [Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab](#), Ram Jawaya Kapur v. State of Punjab was also relied on wherein it was held that it is not necessary that there must be a law already in existence before the executive is enabled to function and that the powers of the Executive are limited merely to the carrying out these laws and that there was nothing in the terms of Article 309 of the Constitution which abridged the power of the Executive to act under Article 162 of the Constitution without a law". Of course executive cannot exercise its power under Article 162 contrary to any existing law or rule, or with regard to a matter which is beyond the legislative competency of the State Legislature. In the instant case the State Legislature has power to make law for the Municipality.

9. Hence, when approval of the Government in exercise of its executive power has been accorded to the proposal of a tax or fee to be imposed by the Municipality which has power to impose it under the Act, absence of rules regulating the conditions of the tax or the fee cannot be a cause for invalidating such imposition. u/s 68(1)(2), the Municipality can impose with the sanction of the State Government any other tax or fee etc. besides those enumerated under the Section.

10. The question whether the Municipality can revise and enhance the rate of the fee can be answered by the proposition that there is the provision of renewal of licence. As there are provisions of renewal and imposition, such powers must be taken to include the powers to revise and enhance the rate. On the question of the possibility of unbridled exercise of such powers by the Municipality, there is certainly a check in the form of the requirement of approval by the Government. Learned Counsel for the Petitioners addressed at the bar that u/s 68 and Section 230 of Act those powers can be exercised by the Board at its meeting and Executive Officer of the Municipality in supersession cannot impose any fee even with the approval of the Government. But in the case of supersession the Executive Officer or the Administrator appointed under the Act exercises all the powers of the Board and hence the argument on behalf of the Petitioners has no force. In this connection reliance can be placed on the decision made in [Gopal Narain Vs. State of Uttar Pradesh and Another](#), In that case it was ruled:

Section 131, U.P. Municipalities Act, 1916 does not violate Article 14 of the Constitution on the ground that it confers on a municipality an unguided and naked power to impose tax. Section 131 does not confer any power on the Board to impose a tax. Section 128 confers such a power and that Section with meticulous care enumerates the subjects of taxation. Section 131 provides a machinery for imposing the said taxes. The provisions of Sections 128, 131, 132 and 133 show that the rate of tax to be levied and the persons or the class of persons liable to pay the same have a reasonable relation to the subjects taxable under the Act. The said rate to be imposed and the persons or the class of persons liable to pay the same are ascertained by a quasi-judicial procedure after giving opportunity to the parties affected, subject to revision by the State Government. It cannot therefore, be said that the power conferred upon the Municipal Board is an arbitrary power offending Article 14 of the Constitution.

11. It was further held in that case (note C) that there is a presumption, when a statutory authority makes an order for imposition of tax that it has followed the prescribed procedure.

12. It was argued by the learned Counsel for the Petitioner that Municipal licence is not necessary when there is the provision of licence under the Assam Cinema (Regulation) Act, 1953 and when the Petitioners have taken license under this Act. But as pointed out by the learned Counsel for the 1st Respondent that very obviously the Act and the Cinemas Act have different bases and purposes. Licence has to be taken out on payment of respective fees from the two different authorities as envisaged under the two Acts.

13. Regarding framing of rules for the purpose of the Act, it has to be said that such rules are needed for regulating and facilitating the acts under the law. Such a step certainly helps the person affected by the functioning of the authority concerned to know where he stands and how he is to proceed. It also helps keeping the authority exercising powers under the Act within known limits. Here in the instant case, admittedly rules have not been framed. The Municipality and the Govt. will certainly see that rules come into existence without further delay.

14. As regards enhancement of fee, the authorities concerned though they have enough power to revise and enhance the rate of fee from time to time, should see that this is not done, in an unreasonable way. Good conscience and equity should not remain strangers even to executive functioning. Justice should form the basis of executive action to be expressed in reasonability.

15. Here in the present case it appears that there was a jump (sic) of the fee from Rs. 500/- to Rs. 1,250/- and then to Rs. 2,000/-. The authorities concerned may reconsider or review the matter on an application of the Petitioner.

16. In view of the aforesaid discussion, I find that the petition should fail. The result is that the petition is dismissed. No order as to costs. The rule is discharged and stay

order, if any, stands vacated.